

**Office of the State Public Defender
Administrative Policies
Human Resources**

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1. Purpose

The purpose of this policy is to establish consistent application of the Broadband Pay Plan in accordance with 2-18-301 through 2-18-303, MCA.

2. Scope

This policy applies to all Office of the State Public Defender (OPD) employees excluding positions listed under 2-18-103 MCA: the chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender.

If this policy conflicts with collective bargaining agreements, the collective bargaining agreements take precedence.

3. Objective

The Office of the State Public Defender (OPD) believes that competent employees are a critical component in the agency's ability to fulfill its mission and goals, and that the Broadband Pay Plan will enhance employees' opportunities for rewards and recognition. Market factors, employee competence and contributions should be important considerations in determining compensation that is fair and equitable. The main objectives of the OPD Broadband Pay Plan are to be internally equitable, externally competitive and sufficiently motivating to more closely reflect an employee's true value to the organization; to provide a closer relationship to the marketplace; and recognize knowledge and performance levels that contribute to the agency mission, dependent upon OPD's ability to fund pay adjustments based on legislative appropriation.

4. Definitions

The following definitions apply to this pay plan policy:

- 4.1 Agency – Office of the State Public Defender (OPD).
- 4.2 Agency Head – the Chief Public Defender.
- 4.3 Appointing Authority – an agency official or designee with the delegated authority to hire or discharge employees.

- 4.4 Base Salary – the amount of compensation paid to an employee, excluding: state contributions to group benefits provided in 2-18-703 MCA; overtime; fringe benefits as defined in 39-2-903 MCA and longevity allowance provided in 2-18-304 MCA.
- 4.5 Bonus – a lump-sum payment that does not affect the employee's base pay.
- 4.6 Break in Service – a period of time in excess of five working days between state employments.
- 4.7 Broadband Pay Plan – a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.
- 4.8 Classification – a process of evaluating the work performed in a given job to determine the appropriate occupation and pay band.
- 4.9 Classified Position – an executive branch position subject to this broadband pay policy.
- 4.10 Competencies – sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a job.
- 4.11 Competency Pay – a wage adjustment type based on job-related competencies considered to be a benefit to the agency.
- 4.12 Competitive Pay Zone – means that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.
- 4.13 Demotion – assigning an employee to an occupation with a lower pay range or a lower pay band.
- 4.14 Department – the department of administration.
- 4.15 Entry Salary – the entry-level base salary for each occupation will be 20 percent below the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.
- 4.16 Longevity Allowance – a salary increase of 1.5% or 2.0% times the base salary for each completed five years of contiguous, uninterrupted state service, as provided in 2-18-304 MCA.
- 4.17 Market Pay – a wage adjustment type up to 100% of the market salary for

that occupation. Market pay adjustments are determined by the OPD pay plan.

- 4.18 Market Salary – the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.
- 4.19 Maximum Salary – the maximum level base salary for each occupation will be 20 percent above the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.
- 4.20 New Hire – an individual who has never worked for state government or a previous state employee returning after a break in service of more than five working days.
- 4.21 Non-Classified Position – an executive branch position not subject to this Broadband Pay Plan policy.
- 4.22 Occupation – a generalized family of jobs having substantially similar duties and requiring similar qualifications, education and experience.
- 4.23 Occupation Job Code – the unique identifier of an occupation and pay band used by the department based on the Standard Occupational Classification (SOC) numbering convention, maintained by the U.S. Department of Labor, Bureau of Labor Statistics.
- 4.24 Pay Band – a wide salary range covering a number of different occupations.
- 4.25 Performance Pay – a wage adjustment type based upon the documented evaluation of the employee's performance.
- 4.26 Position – a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.
- 4.27 Promotion – assigning an employee to an occupation with a higher pay range or a higher pay band.
- 4.28 Reclassification – assignment of a position from one occupational job code to another. Changes are based on a review of current duties and responsibilities.
- 4.29 Results Pay – a wage adjustment type given to an employee or an employee team based on measurable outcomes.

- 4.30 Situational Pay – a wage adjustment type based on atypical situations in the majority of jobs in state government.
- 4.31 Statutory Wage Adjustment – a wage adjustment authorized by law entitling all eligible state employees to receive the increase.
- 4.32 Strategic Pay – a wage adjustment type used to attract and retain an employee with competencies critical or vital to the achievement of an agency's mission or strategic goals.
- 4.33 Training Assignment – a period of employment created at an agency's discretion to allow a candidate to obtain the required knowledge, skills, and behaviors necessary to perform all of the duties of a job.
- 4.34 Transfer – a change of employment including but not limited to inter-agency or intra-agency changes or movement from non-classified to classified positions without a break in service.

5. Occupations and Market Salary Information

OPD will use the occupations and market salary information established by the State Human Resources Division and union contract. OPD will be proactive in working with the State Human Resources Division and Labor Relations to ensure that markets are appropriate for occupations employed by OPD.

6. Establishing Wage Rates

The Broadband Pay Plan allows agencies to address pay issues such as internal equity, external competitiveness, and recognition for employee contributions and added job competencies. Pay decisions must be fiscally responsible using the following guidelines.

6.1 New Hires

Typically, new employees are placed in the pay band for the occupation according to the candidate's qualifications in relation to the job profile requirements and agency salary relationships. Entry is meeting the minimum of the job profile requirement. Additional qualifications and work experience can be considered to place the candidate between entry and market. When determining the employee's base pay, the agency shall consider criteria including but not limited to:

- 1. The employee's job-related qualifications and competencies
- 2. Existing salary relationships within the occupation; work unit; and agency
- 3. The agency's ability to pay
- 4. The competitive labor market

Questions to be considered when establishing the wage offer include:

5. Whether the applicant's education, training and/or work experience exceed the minimum qualifications required based on the job profile.
6. Are there recruitment problems associated with filling positions in this occupation or location?
7. How unique is the position or applicant in terms of training and experience?
8. Are there other special circumstances such as previous employment with OPD but had a break in service?
9. What is the effect on current employees in the same job title? Do the differences in qualifications and performance justify a salary difference? (This must be addressed in every situation.)

Strategic, market-based and situational pay components may be used when retention is a problem, recruitment of qualified candidates has been difficult, or supervisors have been unable to attract candidates into positions (see section 7). Written justification addressing the above questions must be provided to use these components and must be submitted to the Human Resource Officer for approval by the Chief Public Defender and the Administrative Director prior to an offer being made to the successful candidate.

6.2 Training Assignments

1. OPD may use a training assignment to address recruitment, transfer, reorganization or promotion interests.
2. Training assignments may not last more than two years.
3. Employees in a training assignment may be paid below the entry salary.
4. Conditions of the training assignment will be stated in writing and signed by the employee, supervisor and Human Resource Officer. A copy of the written training assignment will be filed in the employee's permanent personnel record and must include:
 - a. the wage rate at the beginning of the training assignment, any increases allowed during the training assignment and the wage rate at the end of the training assignment;
 - b. the duration of the training assignment;
 - c. the knowledge, skills, behaviors, training and experience the employee must acquire during the training assignment; and
 - d. measures of the employee's performance in areas where knowledge, skills, behaviors, training and experience must be acquired by the employee.
5. At the completion of the training assignment, the employee's base salary will be set according to the agency pay plan.

6. If the employee does not satisfactorily complete the training assignment, the agency may:
 - a. return the employee to the position held before the training assignment;
 - b. assign the employee to another position for which the employee is qualified;
 - c. extend the training assignment for a period not to exceed two years; or
 - d. discharge the employee, in compliance with the Discipline Policy, ARM 2.21.6505 et seq. If the employee is under a probationary period discharge must be in compliance with ARM 2.21.3810.

6.3 Supervisory Pay

Employees may be eligible for additional pay when performing supervisory duties. When an employee who is performing supervisory duties is classified in the same occupation and band as their subordinates, OPD may recognize these additional duties with a pay adjustment approved by the Chief Public Defender. When determining the amount of additional pay, the agency will consider levels of supervisory duties performed and internal equity.

6.4 Promotions

A promotion is the advancement of an individual to an occupation with a higher pay range, either within a band or to a higher-level band, based on qualifications and a significant change in work content. The salary of an employee being promoted to a higher occupation or higher pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of a promoted employee will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity.

6.5 Temporary Promotions

Pay for temporarily assigned duties which require additional competencies must be based on an assessment of the additional competencies required in the temporary assignment. The salary of an employee who is temporarily promoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity.

An employee placed in a temporary assignment must be given written notice of the assignment. The notice must contain the length of time the assignment is anticipated to last and include the date the temporary promotion takes effect. The temporary assignment may not exceed two

years. Upon completion of the temporary assignment, the employee's pay will be set at the base salary they had prior to the temporary promotion, plus any scheduled salary increases that may have occurred during the temporary assignment.

6.6 Demotions

The base salary for an employee moving to a lower occupation or lower pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of an employee who is demoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity. The new base salary will not be less than the entry rate for the pay band unless a training assignment has been established under 6.2.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource Officer, for approval by the Chief Public Defender, to protect the employee's current base salary for up to 180 calendar days. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

This rule does not apply to disciplinary and/or voluntary demotions.

6.7 Transfers

The salary for employees moving from one position to another at the same occupation and pay band will not change, unless the circumstances of the move involve strategic or situational pay components.

6.8 Classification

The Broadband Pay Plan has nine "broad bands." All positions are placed in an occupation and pay band using the Benchmark Factoring Method (BFM) and the state classification standards. This plan uses a single factor, complexity, which is applied to the predominant work performed in a position.

The pay bands and classification standards are designed so that an employee's salary will fall within the minimum and maximum salaries in the appropriate pay band. No employee is paid below entry unless they are in a training assignment.

Classification reviews of positions are reduced since the focus is on an employee's progression within the pay band. Competency pay, market pay, performance pay, results pay, and strategic pay components may be used to make these adjustments.

The Broadband Pay Plan allows OPD flexibility to ensure employees are compensated for increased duties and responsibilities, achievements, and demonstrated competencies.

When it is determined that an employee's salary should be adjusted within the pay band, the Regional Deputy Public Defender or supervisor must make a written request on the Wage Adjustment Request Form and forward the request to the Human Resource Officer.

Once the Wage Adjustment Request Form is received a review will be conducted of the employee's job-related qualifications and competencies; existing salary relationships within the agency, the agency's ability to pay, and internal equity. It will be the responsibility of the Chief Public Defender or the Administrative Director to approve or deny the request prior to implementation.

6.9 Reclassification

In the rare circumstance when reclassification of a position is considered, the Regional Deputy Public Defender and supervisor will make a written request for a position review to the Human Resource Officer. Supervisors will be required to submit an electronic copy of an updated job profile. Once the job profile is received by the Human Resource Officer, a review of the position will be conducted to determine the proper occupation and pay band placement. Once the review is completed the Human Resource Officer will forward a recommendation to the Regional Deputy Public Defender, supervisor and the Chief Public Defender for approval.

Compensation for a reclassified position will be determined using the same process and criteria as outlined in the sections titled "Demotions" and "Promotions."

6.10 Change from Non-Classified Position to Classified Position

When an employee's position is changed from non-classified to classified, OPD may set the base salary within a range from the entry rate of the classified occupation up to a base salary that maintains the employee's current base salary as long as it is within the pay range established for the newly-assigned occupation.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource

Officer, for approval by the Chief Public Defender, to protect the employee's current base salary. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

7. Wage Adjustment Types

Wage adjustments must be approved by the Chief Public Defender or the Administrative Director and properly recorded in SABHRS. The following wage adjustments may be given based upon the availability of agency funds:

7.1 Competency Pay

Employees may be eligible to receive additional pay based on their competency. Competencies must be identifiable, observable, measurable and compared to like positions for internal equity purposes. Competency pay may be given as a bonus or as an increase to the base salary.

7.2 Market Pay

Employees whose base salary is below the market salary for their occupation may be eligible for a market pay adjustment. Market pay adjustments may be used to address recruitment and retention issues. Market pay adjustments should not be used to increase an employee's wage above the market of their occupation. An employee's wage may be adjusted above the market rate using one or more of the other wage adjustment types.

7.3 Performance Pay

Employees may be eligible to receive additional pay based on their performance. Prior to implementing performance pay, a performance appraisal tool must be in place that has been approved by the Chief Public Defender or designee. This increase is based on the agency's ability to pay, performance criteria linked to actual results compared with expected results, and internal equity. Performance pay may be given as a bonus or as an increase to the base salary.

7.4 Results Pay

Employees may be eligible to receive additional pay based on the results of their efforts and/or team efforts which can be measured by comparing accomplishments to established goals. Results pay must be given as a bonus.

7.5 Situational Pay

Employees may be eligible to receive additional pay based on atypical situations or working conditions. OPD may use situational pay to address

recruitment or retention issues related to certain requirements of the position such as location, extensive travel, unusual work hours, or unusual physical demands. Situational pay may be given as a bonus or as an increase to the base salary.

7.6 Strategic Pay

Employees may be eligible to receive additional pay based on the agency's strategy to recruit or retain critical or vital competencies. Strategic pay may be given as a bonus or as an increase to the base salary.

8. Longevity Allowance

A longevity allowance must be added to an employee's hourly base salary on the first day of the pay period in which eligibility occurs. The longevity allowance is calculated after all other wage adjustments have been added to the employee's base salary.

9. Effective Dates For Pay

The effective date for pay actions will be the first day of the pay period in which the request for a reclassification or pay adjustment has been approved by the Chief Public Defender or the Administrative Director.

10. Ensuring Equity Across the Agency

OPD has developed several review processes and criteria to ensure consistency and compliance in the application of the competency based performance management and compensation system. OPD will implement this system in compliance with state and federal laws and according to the requirements of the Montana Operations Manual (MOM) 3-0115, the State Performance Management and Evaluation Policy; MOM 3-05-1, the Broadband Pay Plan Policy; Collective Bargaining Agreements with AFSCME; MCA 2-18-303 and MCA 39-31-305.

To ensure equity across the agency, the Chief Public Defender, Regional Deputy Public Defenders, the Administrative Director and the Human Resource Officer will review all pay component requests prior to implementation.

Requests for pay adjustments will be accompanied by a performance review conducted within the last 12 months. The request will depict how the employee meets or exceeds expectations. A statement indicating how the pay increase impacts the budget will also be required.

11. Performance Management

OPD intends to use the performance management system as a way to promote employee growth and offer opportunities for competency related feedback. Through utilizing dependable performance management tools, supervisors and employees will be able to identify areas of strength and weakness in an

employee's performance. Then, employees can be rewarded for their strengths and offered training opportunities to improve areas of weakness.

Recognizing that employees desire development opportunities, OPD is committed to providing the training foundation necessary for employees to evolve in their profession. Training opportunities for employees will be an integral part of the OPD strategic plan.

OPD supervisors will provide regular, effective performance communication.

OPD intends to use the performance communication process as a way to provide worthwhile feedback to employees. This feedback will indicate performance in regard to the position's work, competencies required, meeting proficiency levels and addressing employee development.

The result will be:

- Employee and supervisor understanding and documenting the performance of the employee
- Identifying development needs and desires of the employee and supervisor
- Defining work goals and objectives for the coming year for the employee

OPD has established a performance appraisal review process to ensure consistency and objectivity in the application of the performance management tools. Performance expectations are documented in the appraisal form and the evaluator is required to provide written comments (including specific examples) on ratings where the employee does not exhibit a specific behavior or exceeds expectations. The plan includes weighted factors for reaching evaluation decisions.

The employee's immediate supervisor will complete the initial evaluation. The employee will be allowed 10 working days from the date of the evaluation to submit a written response if they so choose. Responses will be retained with the evaluation in the employee's personnel file. As stated in MOM-3-0115, the State Performance Management and Evaluation Policy, no employee may file a grievance based on the content of a performance management plan, the evaluation, or the reviewer's comments.

The completed performance appraisal will be reviewed by OPD management to ensure consistency and objectivity in the evaluations. OPD supervisors will be held accountable for completing appropriate performance evaluations (including periodic feedback) through the performance evaluation process. OPD is also committed to providing training and technical assistance to employees and management in the implementation and administration of the competency based performance management and compensation system through supervisory training and assistance provided by the Human Resource Office.

OPD will develop a system that summarizes performance with an overall rating. OPD will maintain statistics to ensure there are no adverse impacts on protected classes or other inconsistencies.

12. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to the Broadband Pay Plan. The list should not be considered exhaustive—other policies may apply.

State Laws

2-18-303 MCA	Procedures for administering broadband pay plan.
39-31-305 MCA	Duty to bargain collectively -- good faith.

State Personnel Policies

MOM 3-0115	State Performance Management and Evaluation Policy
MOM 3-05-1	Broadband Pay Plan Policy

13. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to your immediate supervisor or the Human Resource Office at:

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